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No.

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In the

Supreme Court of the United States

October Term, 1996

DELIA MAE WEST,

Petitioner,

vs.

MORRISON'S HOSPITALITY GROUP, a corporation

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Can persons act as Union Stewards while acting as Crew Leaders, where Crew Leaders are paid extra by the Employer, answer to the Employer for the performance and production of others, can be replaced by the Employer at will, and their duties as Crew Leaders include supervising other employees?

II. Can the Union deny an employee the right to be present at Disciplinary Proceedings or Grievances involving said employee?

III. Do employees have an absolute right to pursue their own grievances or can the Union stop them from doing so?

LIST OF PARTIES

The names of all parties to the proceedings in the Court whose judgment is sought to be reviewed here appear in the caption of the case. There is no parent or subsidiary company of any party to be listed.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Delia Mae West, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals denying rehearing is not reported and not yet entered in the Federal Reporter, it is reproduced in the Appendix filed herewith at Appendix A.

The opinion of the Court of Appeals affirming the District Court is noted at 108 F.3d 344 and reproduced in the Appendix at Appendix B.

The opinion of the District Court in this case is not noted in the Federal Supplements and is reproduced in the Appendix at Appendix C.

STATEMENT OF JURISDICTION

The Court of Appeals entered its judgment denying rehearing on April 24, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

29 U.S.C. §159(a) Exclusive representatives; employees' adjustment of grievances directly with employer:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, that any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect: Provided further, that the bargaining representative has been given opportunity to be present at such adjustment.

29 U.S.C. § 164(a) Supervisors as union members:

Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as employees for the purposes of any law, either national or local, relating to collective bargaining.

Title 29 U.S.C. § 186(a) Restrictions on financial transactions:

Payment or lending, etc., of money by employer or agents to employees, representatives, or labor organizations

It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, advisor, or consultant to an employer or who acts in the interest of the employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or thing of value-

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization or any officer or employee thereof, which represents, seeks to represent, or would admit to membership any of the employees of such employer who are engaged in an industry affecting commerce; or

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

STATEMENT OF THE CASE

Delia West (West) sued under *Title 29 U.S.C. § 185* alleging that the Union breached it's duty of fair representation when the Company terminated her without just cause. The District Court granted Summary Judgment to the defendants and West appealed.

A panel of the Eleventh Circuit affirmed without oral argument. West requested a Rehearing and for an En Banc Hearing contending (1) she was denied the right to be present at her own grievance, (2) Union Stewards should not be Crew Leaders, and (3) Unions should not be allowed to arbitrarily interfere with workers right to pursue their own grievances. A rehearing was denied.

Much of the record addresses the Union's failure to protect West from arbitrary managerial actions. Delia West worked for Morrisons when a Union Contract was signed which provided that an employee has an absolute right to take up a grievance with his immediate supervisor, and the grievant could request that a steward be present. The grievant had the right to be present at any step of the grievance.

If not resolved at Step 1 the employee could reduce the grievance to writing and sign it. The signature of the Union Stewards was not required. The next step required a meeting between the District Manager, Cafeteria Manager, Steward and a Rep. designated by the Union.

The contract provided employees may be designated by management as Crew Leaders, and be paid $0.25 per hour above their normal rate. Crew Leaders were assigned to cafeterias and shifts by management. Their functions were managerial as each must have her crew meet management's requirements and answers to management for her crew's performance.

After Union Steward Viola Reed became a Crew Leader, West's sister, Betty Davis, called to the Union Rep's. attention at a Union Meeting that Reed was acting as both a Crew Leader and a Union Steward. The Union Rep. took no affirmative action.

Later West's sister reported that Reed had threatened her on the job. The Rep. requested several times that Reed give Ms. Davis a grievance form and she finally threw one at her. At a meeting at a church, West reminded Reed that she was lying in church, and Reed became openly hostile toward West.

Incidents where the Union failed to adequately represent West include the following.

West sought relief about her work schedule as she had to clock in at the main kitchen, work, go to Unit 5, return to the main kitchen, go to Unit 1, and then return to the main kitchen. She was the only employee required to do so. Reed supervised this schedule and Steward Velma Lucy, knew of this schedule.

The manager got mad and put West on three day lay off, accusing her of being disrespectful. West went to the Union Rep. and told him what had happened, but no action was taken.

Later West discovered the Supervisor had written that she was not carrying out instructions. The contract required the company to notify the Union in writing of a disciplinary lay-off, and Union Rep. Atkins had to be aware of the discrepancy between West's complaint and the written report. Later the Union did not respond when the company changed West's working hours.

After Jessie Wallace became the manager, a patient with extreme mental problems who was working for the Manager, Wallace, asked West for a glass of water. After she handed it to him he told her "Thank You, Ma'am" and walked away. Two weeks later Wallace wrote a complaint accusing West of abusing the patient. The complaint was investigated by State Employees, but Wallace organized a committee which included Reed, Wallace, and his secretary to look into the complaint. West learned of the committee but was not asked to participate.

The State's report fully exonerated West. It disclosed that the patient, who was still working for Wallace, had stated he wished to get the worker fired. Despite being exonerated West was called to Wallace's office on June 22 and told that his committee had recommended she be transferred. Lucy and Reed had agreed to the transfer without discussing it, or the incident with West. West asked if the transfer was because of Viola Reed. This question was never answered. The transfer was made effective and West was told to work Cynthia Sullivan's slot and work schedule and given instructions, including not giving juice to anyone.

The next day a worker named Lena Pearl, while eating breakfast, tried to get additional orange juice, saying it was for a patient. West had just given juice to a Doctor for that patient, and told Pearl she was following Wallace's instructions. When Pearl complained, West was called before Wallace and others, and in effect charged with following instructions. A mental health worker had called West the night before this meeting and said that Lena Pearl had told them that Delia West was fired.

At a meeting of Cafeteria employees, Wallace told all the workers that they were not to make any extra overtime, and if there was any need for

overtime he would call in part-time workers. The workers were never told that he changed that policy. On June 24th, West took the day off to avoid improperly working overtime in violation of his instructions. Without calling West, Reed called in someone to take her place. A new work schedule was posted on June 24, 1994, while West was off.

On June 27, 1994, West was called to Wallace's office who, with Reed present, told her "I am telling you to make Cynthia's schedule. The names will be changed on the schedule and you are to follow that schedule from now on".

The incident which directly lead to West's termination on June 29, 1994, began when West reported for work on the 29th of June, 1994, 15 minutes early and looked at the schedule. Cynthia was shown as being off. West asked a former crew leader, and others to look at the schedule with her. They said she was not scheduled to work. Reed was nearby and saw them looking at the schedule. She saw West leaving, and did not call West's supposed mistake to her attention. Reed called another worker to come in. Reed could have reached West who had returned to her home.

In the posted schedule, looked at by West and others, Sullivan was shown as working "Box", and West was following that schedule as she was told to work "Box". West was never told that she was being moved back to Unit One. Had West's name been in the posted schedule for "Box" she would have stayed at work. The schedule produced by the defendants during discovery was not the one she and her co-workers read.

Later that morning her daughter called and told her that Wallace had changed the schedules, and that she was supposed to be following her own name on the schedule.

West called Wallace's office and asked his secretary, Tammy, if she was supposed to work. She explained that she had gotten others to look at the schedule and everybody said she was supposed to be off. Tammy told her that the names had been changed. West asked Tammy if she should come back in and she told her to call back later to talk to Wallace as Reed had already called someone to work. It was obvious to West that Wallace intended to fire her.

In an 8:30 AM phone call to Wallace she asked, "Why didn't Viola (Reed) call me?". When Wallace called her at 9:15, to fire her, Reed was in his office. West called Union Rep. Atkins who told her to tell Reed the next day to give West grievance forms.

West asked Reed for the forms, and waited patiently for Reed to give her the forms but she did not. West went to payroll, came back later and again asked for the forms. Reed still did not give them to her. Reed's reaction was to laugh in her face and ask West if she had a problem with her. Lucy was present on both occasions, and did not give West the forms. Lucy was good friends with Reed and they rode to work together.

West obtained forms from her sister and took them to a lawyer who helped her fill them out. She carried copies to Wallace's office, Rep. Atkins, and Lucy. In handing the forms to Lucy, she asked her to give them to Reed because she knew how Viola Reed felt about her.

Although neither Reed or Lucy signed the grievance a meeting was held on July 5th with both present. West was not given any notice of the meeting. West discovered that a meeting had been held without her, and that both Stewards, Reed and Lucy, had agreed with management to fire her. She had no opportunity to be present when her grievance was discussed.

West sent written notice that she was taking the grievance to Step 2-A and intended to be present. She received a letter from Rep. Carl Atkins, telling her she had no right to proceed with the grievance, claiming that the grievance had to carry the signature of a Steward and be presented to the manager by the Steward despite the company having acted on the grievance.

She obtained the name of Union Rep. Pepitone, and she called him, explaining how the Union had failed to represent her, about the mistreatment and hostility from Viola Reed, and also that Reed was acting as a Crew Leader and should not have been serving as a Union Steward. She also told him that Mr. Atkins had made no effort to assist her. She never met Mr. Pepitone, but after her call received a letter from him, and talked by phone with him.

West's sister later told her that Pepitone had come down to talk about her sister's problems with Viola Reed and when she told Pepitone that West also had a problem, he said "You don't need to tell me about that. I already know all about it."

Pepitone informed West that because he had not been referred to the case earlier there was nothing that he could do and he advised her to get a lawyer. He was aware of Reed acting as a joint Crew Leader/Union Steward, and said he felt that was wrong.

In a state administrative hearing Morrison's tried to stop West from receiving unemployment. It attempted to prove it had just cause to terminate her, and the Referee ruled it did not.

REASONS FOR GRANTING THE WRIT

1. This Court should grant the writ in order to clarify the parameters of *NLRB v. Town and Country Electric, Inc.*, 116 S.Ct. 450, 133 L.Ed.2d 371, 516 U.S. __, as there is confusion in the lower Courts over whether an employee can be a Union Steward, supposedly protecting the rights of fellow workers, while at the same time being a supervisor over those employees.

Town and Country, supra, points out that Congress, without excluding them from Union Membership, had excluded from the term "employee" as used in the NLRA any individuals employed as supervisors. It also pointed out that following a Court decision in the case of *Packard Motor Car Company v. NLRB*, 330 U.S. 485, 67 S.Ct. 789, 91 L.Ed. 1040, Congress had amended the NLRA to exclude supervisors from the definition of "employee" as used in the act.

Despite *Title 29 U.S.C. § 186(a)*, the rulings by the District and Circuit Courts allow Union Stewards to: (1) be supervisors paid extra by the company, (2) be subject to keeping the position of Crew Leader at the whim of the company, and (3) be responsible for seeing that management's goals are carried out, while at the same time representing workers aggrieved by some conduct or decision of management, including the crew leaders. This case provides a vehicle for addressing standard contract language, which allows management to select supervisors from Union ranks, with no protection for its membership from Union Stewards being so chosen.

It needs to be clear that it is an unfair labor practice for the company to appoint a Steward as a Crew Leader, and a breach of the Union's duty of fair representation to allow a Crew Leader to serve as a Steward. The protection intended by *Title 29 U.S.C. § 186(a)* from companies being able to influence Union Officials in their fiduciary duties can be addressed through this case. A Union cannot advocate for the Company's position and disregard its obligation to its members to act in their best interest. *Airline Pilots Assoc. International v. O'Neal*, 499 U.S. 65, 113 L. Ed.2d 51, 111 S.Ct. 1127.

2. This case also provides a vessel to declare that a Union cannot deprive an employee of the right to be present and participate in disciplinary proceedings or grievances involving her. This right appears to be one on which the lower Courts need redirection and guidance.

Refusal to allow the grievant to be present in the arbitration process with open hostility from the Crew Leader(s)/Union Steward(s), violates the Contract, and fails to provide even the basic right to due process, and fair and adequate representation discussed in *Airline Pilots Assoc.*, supra. Despite this and similar cases, lower courts continue granting summary judgment on the issue of good faith based solely on affidavits claiming good faith, without discussing whether the representation was adequate.

3. The last issue which we contend is of sufficient importance, to persons not directly involved in this case, to warrant certiorari, is the Right of Workers to represent themselves. It is probably the most crucial of the three issues presented, as it affects the most workers. Despite *Title 29 U.S.C. § 159(a)* the Union openly sought to prevent, and did prevent, West's pursuit of the arbitration process.

If the Union felt management was right in its actions, once West made the decision to retain counsel and pursue the grievance herself, the Union could be allowed, after proper notice to come in to arbitration on the side of the Company, but should not be allowed to cut off the grievant from pursuing her complaint through arbitration at her own expense, subject to reimbursement in the event she is successful.

The District Court's opinion presumes, without directly addressing the issue, that the Union had a right to cut a grievant off from the arbitration process. The 11th Circuit also does not address the issue. Another District Court recently declared in *Morris v. Local 819*, 954 F.Supp. 573, that a

worker has no right to demand arbitration. Another District Court in *Shufford v. Truck Drivers Helpers*, 954 F.Supp. 1080, declared that it was proper for the Union to exclude counsel retained by a worker from the arbitration process.

I

PERSONS CANNOT ACT AS UNION STEWARDS WHILE ACTING AS CREW LEADERS, WHERE CREW LEADERS ARE PAID EXTRA BY THE COMPANY, ANSWER TO THE EMPLOYER FOR THE PERFORMANCE AND PRODUCTION OF OTHERS, CAN BE REPLACED BY THE EMPLOYER AT WILL, AND THEIR DUTIES AS CREW LEADERS INCLUDE SUPERVISING OTHER EMPLOYEES.

Title 29 U.S.C. § 186(a) declares it unlawful for an employer to pay any money to a representative of any of his employees or any officer or employees of a union in excess of their normal compensation with the intent to influence him in respect to any of his actions, decisions, or duties as a represen-tative of employees.

NLRB v Town and Country Electric, Inc., supra, does not approve the company, with the concurrence of the Union, violating *Title 29 U.S.C. § 186(a)* by paying extra compensation to Union Stewards serving as Crew Leaders. This Court stated, 116 S.Ct. at 455-56:

> "a person may be the servant of two masters...at one time as to one act, if the service to one does not involve abandonment of the service to the other."

The Union cannot justify its ignoring of the admonition that no (wo)man should serve two masters where service to one involves abandonment of the service of the other. The interest of Union Stewards cannot be in meeting management's goals. If an employee is singled out for abuse, mistreatment, convoluted assignments, or termination, there is no one to look out for the worker's interest. Defiance by a Crew Leader of management leads to replacement of that Crew Leader by another who would then get the extra pay and be allowed to socialize with salaried management. It is clear which master a Crew Leader must serve.

Based on clear statutory language we ask for a declaration that a Union Steward cannot serve as a Crew Leader, or become an overseer, or part of the management team, as this is a violation of the statute. Alternatively, we are asking for a holding that a Union Steward cannot function as a Crew Leader where the crew leader is subject to appointment at the whim of management, is paid extra, and is given supervisory duties as a crew leader.

In *NLRB v. Town and Country*, supra, this Court reaffirmed by citation it's holdings in *NLRB v Hendricks County, etc.*, 102 S.Ct. 216, 454 U.S. 170, 70 L.Ed. 2d 323. This does not endorse supervisors acting as Union Stewards. *Hendricks County*, supra, was remanded on the specific issue of whether some seventeen (17) employees were not eligible for union membership as their jobs were managerial or supervisory.

For the Union to allow or encourage it's Union Stewards, whose first interest should be to protect their fellow workers and to advocate for them, to be placed in a compromised position by serving as Crew Leaders, is a blatant violation of the Union's fiduciary duty to its members. Its reckless indifference is compounded in this case because being a Crew Leader put Union Steward Reed in line for, and she was promoted to, salaried management right after West "had a problem with her".

This case affords an opportunity to uphold the statutory right of supervisors to be Union members, while protecting the right of rank and file workers to be represented by Union Stewards, who will act to protect the worker's best interest. This case also affords an opportunity to define the difference between a "person" who is entitled to hold union membership and a person who is entitled to protection under the act as being an "employee".

West could not be terminated under the contract except for just cause, which means a reasonable cause, one that is material and substantial as applied to a particular set of facts. *Avondale Mills v. Burnette*, 268 Ala. 82, 106 So.2d 885. Without the Union running interference for the Company West was able to establish in an Administrative Hearing that she was not terminated for just cause. To find against West the Appeals Referee would have had to find that West was fired for just cause. The Referee found for West and under Alabama Law his unappealed ruling became binding and final. *White v. Allen*, 594 So.2d 129; *Quick v. Utotem*, 365 So.2d 1245; *Haigler v. Dept. of Ind. Relations*, 512 So.2d 113; *Avondale Mills v. Burnette*, 268 Ala. 82, 106 So.2d 885.

West's punishment by termination exceeded the contract, even if she had committed the conduct charged, and is discriminatory, arbitrary, and in bad faith. *Brotherhood of R.R. Trainmen v. L&N R.R. Co.*, 211 F.Supp, 308, affirmed 334 F.2d 79, cert. denied 85 S.Ct. 328, 379 U.S. 934, 13 L.Ed.2d 345. Even if the contract had not provided punishment for an employee being absent from work, under no circumstances should the Union advocate for the Company in disregard of its fiduciary obligation to its members to act in their best interest and behalf. *Airline Pilots Assoc.*, supra.

The use of Union Stewards as Crew Leaders deprives all rank and file employees, not just West, of good faith representation resulting in any dispute involving Crew Leaders, and many other complaints, being summarily and arbitrarily rejected. This case is full of the Union's failure to assert the contract to stop uneven and arbitrary treatment of West. *Brotherhood of R.R. Trainmen v L&N Railroad Company*, supra.

The Union owed a fiduciary obligation to West to process her grievance in good faith. Except for conclusory statements by Defendants' witnesses, there was no evidence or showing that the Union acted to serve the interests of West, without hostility or discrimination, exercising its discretion with complete good faith and honesty, and avoiding arbitrary conduct. *Cox v. C.H. Masland & Sons, Inc.* 607 F. 2d 138; Also see *Airline Pilots*, supra.

A jury is free to find that part of the Union's failure to meet this responsibility towards West was because Rep. Atkins shirked his responsibilities leaving important decisions up to Crew Leader Reed. He justifies his conduct, by claiming to have adopted an attitude of noninvolvement. This does not comply with *Title 29 U.S.C. § 159(a)* and the Union's fiduciary duty.

The Union reasonably knew that Union Steward Lucy was dear friends with and car pooled with Crew Leader-Union Steward Reed, that West had not received fair and adequate representation in the past, and would not receive any in her grievance relating to her termination. Where there is no adequate representation the judgment cannot be allowed to stand. *Airline Pilots,* supra.

In *Airline Pilots*, supra, the Union contended that the duty of fair representation did not impose an obligation to provide adequate representation, and if it says it acted in good faith and without discrimination it is entitled to summary judgment.

This Court stated that a Court is expected to conduct an examination of the terms of the agreement between the union and the company in the Court's search for evidence that a union did not fairly and adequately represent it's constituency, stating:

> "The exercise of a granted power to act in behalf of others involves the assumption toward them of a duty to exercise the power in their interest and behalf." (*Steele v Louisville and Nashville Railroad Company*, 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173 (1944).

Self-serving declarations of good faith are not grounds for granting summary judgment where there is circumstantial and other evidence of Bad Faith Conduct or Inadequate Representation by the Union Steward(s) and its Rep.

A jury could find the Union failed to provide adequate representation to West and now is lying in saying it acted in good faith. It could declare that West did have a problem with Crew Leader/Union Steward Reed and Union Steward Lucy, and that they performed no acts of good faith taken with West's best interest in mind. *Steele v. L & N RR Co.*, supra.

In *Tedford v. Peabody Coal Company*, 533 F.2d 952, the 5th Circuit declared that acts of reprisal may well be considered arbitrary, capricious, discriminatory, and in bad faith. In *Tedford* the court also declared the duty to identify and protect individual expectations as far as possible without undermining collective interests stating that the showing by the Union must be that its interpretations and conduct were based upon relevant, permissible union factors, which exclude the possibility of their being based on motivations such as personal animosity or political favoritism, are a rational result of consideration of those factors, and are inclusive of fair and impartial consideration of the interests of all employees.

Up till and during her termination West openly accused Crew Leader Reed of being behind actions taken against her. The Union tacitly admits through Reed's affidavit that Reed did not speak in West's behalf. At the grievance all that the Union presented in West's behalf was her grievance form. Neither the company nor the Union make any showing that they treated the grievance as also being against Crew Leader-Union Steward, Reed.

In *Bean v. United Rubber, Cork, Linoleum and Plastic Workers of America*, 861 F.Supp. 1554, the Northern District of Ala. held that the failure to oppose unfair labor practices is a breach of the Union's duty of fair representation. The record shows nothing which the Union did to assist West in the many problems which she had with her Crew Leader, and other management, which was in West's best interest, or sought to correct discriminatory punishment. *Brotherhood of R.R. Trainmen v. L&N R.R. Co.*, supra.

Pepitone's statements to West show he recognized the conflict that was built into a joint Crew Leader-Union Steward status. Whether Pepitone acted in good faith, adequately, and with honesty of purpose has no bearing on this case, absent a showing that he could reopen the case over company objections.

II

THE UNION CANNOT DEPRIVE AN EMPLOYEE OF THE RIGHT TO BE PRESENT AT DISCIPLINARY PROCEEDINGS OR GRIEVANCES INVOLVING HER.

Decisions concerning West were already made, with the concurrence of her Crew Leader-Union Steward Reed and announced to her. The Union made no effort to see that West was allowed to be present while these decisions were being made.

Article XVIII of the contract provides that an employee has an absolute right to take up a grievance with his immediate supervisor who will attempt to adjust it. The grievant could request that a steward be present, but did not have to request a Union Steward. The grievant had the right to be present at any step of the grievance procedure. Step 2 allowed the employee to reduce the grievance to writing and to sign it. Even the Union's negotiated contract did not require the signature of the Union Stewards. The contract is thus consistent with *29 U.S.C. § 159(a)*.

Step 2-A called for a meeting between the District Manager, Cafeteria Manager, the Steward and a representative designated by the Union. The grievant had a right to be present and thus a right to be notified of the meeting.

After the three main individuals, who West approached in the Union, failed to assist her in filling out the forms to fully state the grievance and despite the fact that no Union Steward had signed the grievance, West was not afforded an opportunity to be present at any step of the proceedings.

The grievance was submitted on Friday, July 1, 1994, by West. The 2nd and 3rd were the weekend and July 4 was a holiday. It was denied on July 5, 1994, without West being notified of, and thus not allowed to attend, the hearing. The meeting was attended by Union Steward Lucy, who had been handed the grievance by West but who had failed to sign it, and by Crew Leader Reed who had called in another worker to take West's place, and who had laughed in her face.

Both the Union and the Company violated ARTICLE XVIII of the contract by not notifying West and allowing her to be present and have input or proceed on her own, when her transfer to a different unit was discussed, at the discussion leading up to her termination, or when her termination grievance was discussed.

Refusal to allow the grievant to be present in the arbitration process with or without open hostility from the Crew Leader-Union Steward(s), violates the Contract, and *29 U.S.C. § 159(a)* and fails to provide even the basic right to due process and adequate and fair representation declared in *Airline Pilots Assoc.*, supra.

Union Rep. Atkins was aware of animosity by the Union Stewards, one of whom was West's Crew Leader, against West, as well as West's sister, and failed to attend a critical grievance hearing, even after reading West's grievance, which referred to her Crew Leader-Union Steward, Reed. Without West attending the hearing there was no one present to act in her best interest. This further deprived West of any, much less adequate representation.

In West's problems with management Crew Leader-Union Steward, Reed, was often present, and Steward Lucy was sometimes present, both siding with management, and West acted wisely in seeking legal counsel to represent her when her job was on the line and she had no hope of being assisted by the Union, which cannot point to one time where it adequately represented West in good faith. We will argue that *Title 29 U.S.C. § 159(a)* gives to all aggrieved workers the right to be present at all stages of the grievance procedure and in appropriate cases to have their own counsel present.

The Union's breach of it's fiduciary duty to West is aggravated by it's insisting she obtain grievance forms from her Crew Leader, which she could not do, and then the Union claiming she could not pursue the grievance herself or be present at the hearing, even though the persons who had refused her the forms and then did not sign the forms after their delivery, attended a hearing on the grievance.

The defendants will undoubtedly claim *Vaca v Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed. 2d 842, and its prodigy are favorable to them. The case which best defines the parameters and intent of *Vaca*, supra, is *Airline Pilots Assoc.*, supra, in which this Court set out standards on the Union's duty of fair representation.

In *Airline Pilots*, supra, the Union claimed the duty did not impose an obligation to provide Adequate Representation, and if it contended that it acted in good faith and without discrimination it was entitled to summary judgment.

This Court stated:

> "The exercise of a granted power to act in behalf of others involves the assumption toward them of a duty to exercise the power in their interest and behalf. (*Steele v Louisville and Nashville Railroad Company*, supra.)"

In footnote 6 this Court stated that bad faith is a triable issue. This Court compared the duty of the Union to the duty owed by a trustee to trust beneficiaries and cited *Teamsters v Terry*, 494 U.S. 558, 110 S.Ct. 1339, 108 L.Ed. 2d 519. It pointed out that some members of the Court had likened the relationship between the Union and the employee to that between an attorney and his client, and that it also paralleled the responsibility of corporate officers and directors toward shareholders. It stated:

> "Just as these fiduciaries owe their beneficiaries a duty of care as well as a duty of loyalty, a union owes employees a duty to represent them adequately as well as honestly and in good faith".

This Court rejected the Union's contention that the right of members to replace incompetent or inept Union Officers, meant the Union need owe no enforceable duty of adequate representation.

Citing *Ford Motor Company v Huffman*, 324 U.S. 330, 73 S.Ct. 681, 97 L.Ed. 1048, the Union argued that no review of the substantive terms of a settlement between labor and management is permissible other than good faith and honesty of purpose in the exercise of it's discretion.

This Court stated:

> "Unlike ALPA, we do not read this passage to limit review of a union's actions to good faith and honesty of purpose, but rather to recognize that a union's conduct must also be within a wide range of reasonableness."

What this Court said in *Airline Pilots*, supra, and apparently needs to reiterate to the lower Courts is that Unions must represent their members (1) in good faith; (2) without discrimination; (3) in it's members best interests and behalf; (4) in a non-arbitrary manner; (5) with honesty of purpose; (6) within a wide range of reasonableness; (7) without hostility; and (8) fairly. West contends that these high standards can only be achieved when persons are allowed to attend and make verbal input into discussions of wrongs committed against them by management.

West was not allowed to be present and the only thing given in her behalf was the written grievance itself. West was represented by a Crew Leader seeking promotion and who knew and reflected Wallace's feelings towards West, and also had previously backed management's every decision, whim, and wish. West's only hope at Step Two was to attend the grievance hearing and insist on the acceptance of her oral input into the discussion of the grievance.

III

EMPLOYEES HAVE AN ABSOLUTE RIGHT TO PURSUE THEIR OWN GRIEVANCES.

On July 7, 1994, Rep. Atkins, who had not signed the grievance form himself, responded to West's efforts to continue pursuing the grievance by writing her a letter telling her that it would be necessary for her to obtain the signature of the Union Stewards, who had refused to give her the grievance forms, in order to proceed to Step 2A. The implication of the letter is that the

grievance was not a valid actionable grievance, even though the company had acted on it by holding a meeting with the Union Stewards.

Title 29 U.S.C. § 159(a) provides that any individual employee shall have the right at any time to present grievances to their employer and to have such grievances adjusted without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect. The Statute gave the Union the right to attend, but not to stop the process.

Simply put, we understand this to mean that a worker cannot, by pursuing a grievance on her own, secure a more favorable employment situation than that enjoyed by coworkers under the contract, but can pursue contractual violations which affect her.

Under *Title 29 U.S.C. 159(a)* a worker has a right to pursue her grievance, and the Union refusing to allow her to do so violates this Statute, just as if the company had refused to accept the grievance.

Union Rep. Atkins' letter to West came immediately after Atkins, despite being aware of the hostility shown to West by Reed and Lucy, and in disregard of the contract, failed to attend the Step 2 grievance hearing, at which all that was presented in West's behalf was her grievance form.

At the time he wrote the letter he knew that Reed and Lucy had agreed with management to deny the grievance without the grievant being present. A Union Steward who handles a complaint which involves or concerns her conduct as a Crew Leader, cannot be treated as having fairly and objectively represented the grievant. *Steele v Louisville and Nashville Railroad Company,* supra, *Cox v. C.H. Masland & Sons, Inc.*, supra.

West attempted to overcome the Union's failure to furnish and assist her with completion of the grievance form by obtaining a grievance form from other sources and filling the grievance form out with assistance of counsel. The effect of Atkins' letter was to short circuit plaintiff's efforts to pursue her grievance by denying her the right to represent herself after the Union and the Company had tried to arbitrarily dispose of her grievance. The Union refused her the right to move on to the next step of the grievance process. This conduct of the Union is in clear violation of *Title 29 U.S.C. § 159(a)*. Not only does this Statute, as we have set it out above, protect the

right of a union member to pursue her own grievance but there are also cases upholding this right and the statute itself.

In *Local Linoleum and Plastic Workers of America AFL-CIO v. NLRB,* 368 F.2d 12, cert. denied 389 U.S. 837, 88 S. Ct. 53, 19 L.Ed.2d 99, rehearing denied 88 S.Ct. 762, 389 U.S. 1060, 19 L. Ed.2d 866, it was held that the right of the members to represent themselves did not mean that the Union did not owe a duty of Fair Representation.

The right of workers to represent themselves and pursue their own grievances is also upheld in *Donnelly v. United Fruit Company*, 190 A.2d 825, 40 N.J. 61 (1963); *Whirls v. Trailmobile Co.*, 64 F.Supp. 713, (D.C. Ohio 1945), affirmed 154 F.2d 866, reversed on other grounds, 67 S.Ct. 982, 331 U.S. 40, 91 L.Ed. 1328; *Woody v. Sterling Aluminum Products, Inc.*, 243 F.Supp. 755 (D.C. Mo. 1965); *Serra v. Pepsi Cola General Bottlers, Inc.*, 248 F.Supp. 684 (D.C. Ill. 1965); *NLRB vs. Union Pacific Stages*, 99 F.2d 153 (La. 1938). Also see *Evans v. Central of Georgia R.R. Co.*, (D.C. Ga. 1985) 619 F.Supp. 1364; *Grant v. ARA Services, Inc.*, 626 F.Supp. 66; *Costello v. U.P.S., Inc.*, 617 F.Supp. 123, affirmed 774 F.2d 1150.

CONCLUSION

The three issues asserted in this Petition for Certiorari are critical and important. No Union should have its members represented by Union Representatives who take a position of non-involvement, and by Union Stewards who are charged with the responsibility of seeing that their fellow workers meet production quotas and other demands of management, and who receive extra compensation from the Company for acting as Supervisors, while subject to appointment and removal at will.

Where there has been open hostility shown by the Union Steward(s) and there is a history of non representation as is shown in this case, the lower Courts' decisions, are a rejection of precedence of this Court and renders contractual and statutory protections which are part of the Labor Law meaningless, leaving management and big labor free to do with workers as they will.

The decisions by the lower courts show a need for further guidance on Adequate Representation. They also show a failure to understand that Good Faith is a jury issue.

If workers cannot prosecute their own grievances, despite a Congressional Act saying they can, particularly, where there has been a showing, as in this case, that the Union did not adequately represent a worker, but took the Company's side on every issue, then the Union is free to decide who it will assist and who it will allow to be persecuted and terminated. This leaves the Company free to persecute and terminate without regard to the contractual rights of the workers.

If workers cannot attend hearings at which they or their grievances are discussed between Management and the Union the likelihood of fairness and equity in the workplace will be nil or non-existent. It must be made clear that workers have a right to be present at each step of the arbitration process, and to prosecute their own grievances and the Union cannot suppress that right.

A finding that the record in this case sustains summary judgment drives the last nail in the coffin of any meaningful 301 action, leaving workers at the mercy of Unions and Management.

The conduct of the Union in this case, even though now upheld by two courts, makes a mockery of any fiduciary duty being owed by the Union to its members. It also forces workers, who may be semi-illiterate and undereducated, to address in a formal written document issues that will be discussed or circumvented by others in oral discussions.

Respectfully submitted,

William H. Saliba
SALIW-2476
Attorney for Plaintiff
850 Downtowner Blvd.
Mobile, AL 36609
(334) 342-0571

APPENDIX A - OPINION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 11TH CIRCUIT DATED APRIL 24, 1997

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 96-6449

Delia Mae West,

Plaintiff-Appellant,

versus

Morrisons Hospitality Group, a corporation,
United Steelworkers of America, AFL-CIO-CLC,

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Alabama

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

(Opinion___, 11th Cir., 19_,_F.2d__).

Before: COX, DUBINA, and BLACK, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on

rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion (s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

E. R. COX
UNITED STATES CIRCUIT JUDGE

ORD-42
(6/95)

APPENDIX B - OPINION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 11TH CIRCUIT DATED FEBRUARY 11, 1997

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 96-6449
Non-Argument Calendar

D. C. Docket no. 95-72-AH-S

Delia Mae West,

Plaintiff-Appellant,

versus

Morrisons Hospitality Group, a corporation,
United Steelworkers of America, AFL-CIO-CLC,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Alabama

(February 11, 1997)

Before COX, DUBINA and BLACK, Circuit Judges.

PER CURIAM: AFFIRMED. See 11th Cir. Rule 36-1[1]

Judgment Entered: February 11, 1997
For the Court: Miguel J. Cortez, Clerk
By: MATT DAVIDSON
Deputy Clerk

ISSUED AS MANDATE: 5/2/97

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[1]11th Cir. R. 36-1 provides:
When the Court determines that any of the following circumstances exist

(a) the judgment of the district Court is based on findings of fact that are not clearly erroneous:

(b) the evidence in support of a jury verdict is sufficient;

(c) the order of an administrative agency is support by substantial evidence on the record as a whole;

(d) a summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

(e) the judgment has been entered without a reversible error of law;

and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion

APPENDIX C - OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA DATED APRIL 8, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DELIA MAE WEST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 95-00072-AH-S
	)	
MORRISON'S HOSPITALITY GROUP, ET AL.,	)	
	)	
	)	
Defendants.	)	

JUDGMENT

This matter is before the Court on the "Motion For Summary Judgment" filed by Defendant United Steelworkers of America, AFL-CIO-CLC, (Doc.21), and the "Motion For Summary Judgment" filed by Defendant Morrison's Hospitality Group. (Doc. 24.) As the Court has granted both motions, it is **ORDERED, ADJUDGED and DECREED** that Plaintiff **SHALL HAVE AND RECOVER NOTHING** against the Defendants in the above-styled action. The above-styled action is **DISMISSED WITH PREJUDICE.**

DONE, this 8th day of April, 1996.

Alex Howard
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DELIA MAE WEST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 95-00072-AH-S
	)	
MORRISON'S HOSPITALITY GROUP, ET AL.,	)	
	)	
	)	
Defendants.	)	

ORDER

This matter is before the Court on the "Motion For Summary Judgment" filed by Defendant United Steelworkers of America, AFL-CIO-CLC (the "Union"), (Doc. 21), and the "Motion For Summary Judgment" filed by Defendant Morrison's Hospitality Group (Morrison's"). (Doc. 24) Although Morrison's moves separately, it adopts by reference the arguments made in the brief filed by the Union. For the reasons stated below, the motions for summary judgment are **GRANTED.**

I. FINDINGS OF FACTS

1. At the time of her discharge, Delia West ("Plaintiff") worked for Morrison's as a hospital cafeteria worker.

2. Plaintiff had worked in the position for approximately ten years.

3. The Union represented Plaintiff at the time of her discharge.

4. Prior to her termination, Plaintiff had been the subject of at least three disciplinary actions not including the incident which caused her termination. In addition, a hospital patient had filed an incident report alleging that Plaintiff had been verbally abusive. Morrison's investigated the complaint and concluded that the abuse could not be proven.

5. Morrison's terminated Plaintiff's employment of June 29, 1994, because Plaintiff misread a work schedule and did not appear for work.

6. On July 1, 1994, on the advise of Carl Atkins, staff representative for the Union, Plaintiff filed a grievance protesting her termination. In her grievance, Plaintiff alleged that Viola Reed, a local union steward, had exhibited some hostility toward her.

7. The local union stewards then met with Morrison's management to discuss the dispute, after which Morrison's denied the grievance. On July 5, 1994, Jesse Wallace, Director of Morrison's Health Care Group, sent a memorandum to Atkins advising him of the decision.

9. Viola Reed and Velma Lucy, another local union steward, decided not to appeal the denial of the grievance.

10. On July 7, 1994 Atkins wrote a letter to Plaintiff advising her of the proper procedure for pursuing her grievance. Atkins also informed Plaintiff that an investigation had not shown the steward's decision to be the result of Reed's alleged hostility.

11. A short time later, James Pepitone, another staff representative of the Union, was assigned to Morrison's.

12. On August 10, 1994, Pepitone wrote Plaintiff a letter requesting additional information regarding her grievance. Pepitone then investigated the matter and decided not to pursue Plaintiff's grievance. Pepitone had no prior dealings with Plaintiff.

II. CONCLUSIONS OF LAW

A. The Summary Judgment Standard

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "A factual dispute is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. A fact is 'material' if it might affect the outcome of the suit under the governing substantive law." *Beck v.*

Somerset Technologies, Inc., 882 F.2d 993, 996 (5th Cir. 1989) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

The basic issue before the Court on a motion for summary judgment is whether the evidence presents a sufficient disagreement to require submission to a jury, or whether it is so one-sided that one party must prevail as a matter of law. *See Anderson,* 477 U.S. at 251-52. "[T]he moving party has the burden of showing the absence of a genuine issue as to any material fact, and for these purposes the material it lodge[s]," and all factual inferences arising from it, must be viewed in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Peppers v. Coates*, 887 F.2d 1493, 1498 (11th Cir. 1989). Where the nonmoving party, as here, bears the burden of proof at trial, "the burden on the moving party may be discharged by 'showing'—that is, pointing out to the District Court—that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

Once the movant satisfies its initial burden under Rule 56(c) of demonstrating the absence of a genuine issue of material fact, the burden shifts to the nonmovant to "come forward with specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P. 56(e)) (emphasis removed) (internal quotation marks omitted). Otherwise stated, the nonmovant must "demonstrate that there is indeed a material issue of fact that precludes summary judgment." *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). The shifting burden from movant to nonmovant at summary judgment described above applies regardless of which party will bear the burden of proof at trial. *See id.* at 607. "A mere 'scintilla' of evidence supporting the [nonmoving] party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushta*, 475 U.S. at 587 (citation omitted). The moving party is likewise entitle to judgment as a matter of law when the nonmoving party fails to show sufficiently an essential element of the case as to which the nonmoving party has the burden of proof. *See Peppers*, 887 F.2d at 1497; *Manor Healthcare Corp. v. Lomelo*, 929 F.2d 633, 636 (llth Cir. 1991).

B. Analysis

Plaintiff brings this action under Section 301 of the Labor Management Relations Act, alleging that the Union breached its duty of fair representation by refusing to pursue her grievance and that Morrison's Hospitality Group, her former employer, violated the terms of its labor agreement by wrongfully terminating her employment. The Union and Morrison's move for summary judgment on the grounds that (1) Plaintiff's claim is barred by the applicable statute of limitations, and (2) there is no triable issue of fact with respect to whether the Union acted in an arbitrary, capricious, and bad-faith manner in handling her grievance. The Court considers each contention in turn.

1. Statute of Limitations

Section 301 of the Labor Management Relations Act ("LMRA") provides a federal forum for suits alleging violations of labor contracts. 29 U.S.C. § 185(a). Although the LMRA contains no statute of limitations for Section 301 actions, the United States Supreme Court has held that the six-month statute of limitations set forth in Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b), applies to "hybrid" Section 301 suits. *DelCostello v. Teamsters*, 462 U.S. 151, 154 (1983); *Proudfoot v. Seafarer's Int'l Union*, 779 F.2d 1558, 1559 (11th Cir.1986)

Generally, the six-month limitations period for a Section 301 claim begins to run "when in the exercise of reasonable diligence the claimant knew or should have known of the injury." *Cox v. Administrator United States Steel & Carnegie*, 17 F.3d 1386, 1412 (11th Cir. 1986). However, because a hybrid Section 301 claim involves separate yet interdependent claims against the employer and union, the separate causes of action "accrue simultaneously" for limitations purposes. *Hill v. Georgia Power Co.*, 786 F.2d 1071, 1075 (11th Cir. 1986). The Eleventh Circuit explained the analysis in the following manner:

> [t]he timeliness of the suit must be measured from the date on which the employee knew or should have known of the union's final action or the date on which the employee knew or should have known of the employer's final action, whichever occurs later....

Proudfoot, 779 F.2d at 1559 (llth Cir. 1986). "Final action," as defined by the court, means "the point where the grievance procedure was exhausted or otherwise broke down to the employee's disadvantage." *Proudfoot*, 779 F.2d at 1559. In the present action, Plaintiff filed her complaint on January 30, 1995, meaning that if the latest "final action" occurred before July 30, 1994, this action is untimely.

The evidence in this case indicates that management advised Plaintiff on July 5, 1994 that the company would not reverse her discharge. Thus, the final action of her employer falls short of the July 30 mark for timeliness. However, on August 10, 1994, James A. Pepitone, staff representative for the Union, wrote a letter to Plaintiff stating that "I need more information to better represent you." As this letter demonstrates that the grievance procedure was not "exhausted...to the employee's disadvantage" as of August 10, 1994 the Court finds that Plaintiff's claim is not barred by statute of limitations.

2. Duty of Fair Representation

A hybrid Section 301 claim is comprised of two distinct causes of action: one against the employer for breach of contract and the other against the union for unfair representation. *DelCostello*, 462 U.S. at 164. However, because the two actions are "inextricably interdependent," a plaintiff must prove not only that the union violated its duty of fair representation, but also that the employer breached its collective bargaining agreement. *Proudfoot*, 1558 F.2d at 1559 (citing *DelCostello*, 462 U.S. at 165). The Court looks first to whether the Union failed to provide Plaintiff with fair representation with respect to her grievance.

Plaintiff alleges that the Union breached its duty of fair representation by refusing to take her grievance to arbitration. Defendants moves for summary judgment on the grounds that there is insufficient evidence demonstrating that the union's conducted was arbitrary, discriminatory, or in bad faith." Viewing the evidence in the light most favorable to Plaintiff, the Court finds that summary judgment is due to be granted.

As the exclusive bargaining agent of an employee, a union carries a statutory obligation "to represent fairly the interest of all bargaining-unit members during negotiation, administration, and enforcement of collective bargaining agreements." *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42, 47(1979); *see also Harris v. Schwerman Trucking Co*,

668 F.2d 1204,1206 (11th Cir. 1982). A union breaches its statutory duty of fair representation when its conduct toward a member is "arbitrary, discriminatory, or in bad faith." *Vaca*, 386 U.S. at 190; *Harris*, 669 F.2d at 1206.

In applying this standard, a district court is to focus its attention on the manner in which the union has handled the grievance, "*Smith v Babcock & Wilcox Co., Refractories Div.*, 726 F.2d at 1562, 1565 (11th Cir. 1984), while recognizing that a "union is allowed considerable latitude in its representation of employees," *Harris*, 668 F.2d at 1206, to the extent that its conduct will withstand judicial scrutiny unless it is "so far outside a 'wide range of reasonableness; as to the irrational." *Air Line Pilots Ass'n. I'ntl v. O'Neill*, 499 U.S. 65, 67 (1991) (quoting *Ford Motor Co. v. Hoffman*, 345 U.S. 330, 338 (1953)); *see also Smith*, 726 F.2d at 668.

The substantial deference afforded a union in representing its members means that a breach of the duty of fair representation "cannot be based on the trial court's view regarding the probability of success on the merits of a grievance.: *Freeman v O'Neal Steel Inc.*, 609 F.2d 1122, 1126 (11th Cir.1980) Furthermore, "[a] union's broad discretion in prosecuting grievance complaints includes not only the right to settle the dispute short of arbitration but also to refuse to initiate the first steps in the appeal procedure . . . . *Freeman*, 609 F.2d at 1126 (11th Cir. 1980). Even a union's negligent handling of a member's grievance does not amount to a breach of the duty of fair representation. *See United Steelworkers of America v Rawson*, 495 U.S. 362, 372-73 (1990).

In this case, there is insufficient evidence from which a reasonable jury could find that the Union handled Plaintiff's grievance in an arbitrary, discriminatory, or bad-faith manner. This finding is based on substantial evidence in the record demonstrating that on numerous occasions the Union made a deliberate effort to consider the merits of Plaintiff's claim. Moreover, the facts show that both the Union and Morrison's took concerted steps to ensure that Plaintiff understood the status of her grievance and the proper procedures for pursuing her protest.

For example, the facts demonstrate that after Jesse Wallace met with Viola Reed and Velma Lucy to discuss the validity of Plaintiff's grievance, Wallace informed Carl Atkins of the decision. Soon thereafter, Atkins wrote a letter to Plaintiff advising her of the proper procedure for pursuing her grievance. Significantly, Atkins made the following statement in the letter, evidencing his active involvement in the dispute:

> As you know I tried to get the Stewards to sign your case but they would not and gave many reasons why [sic] none of which were because they did not like you. My advise to you is to go to the Stewards and explain your views to them and attempt to get them to sign and submit your grievance.

Even more telling is a letter written to Plaintiff by James Pepitone, another representative of the Union. In that letter, Pepitone writes:

> I received some of the correspondence concerning your termination, but I need more information to better represent you in this matter. Would you please forward to this office the address and phone number of the following people, and any other that might be of some help.

The facts further indicate that after writing this letter, Pepitone personally investigated the matter.

Plaintiff, however, claims that the Union must have breached its duty of fair representation because Viola Reed exhibited hostility toward her. This argument fails for a number of reasons. First, evidence that such animosity existed is scant and, for the most par, based on hearsay and conjecture. Second, even if Reed displayed some degree of animosity toward Plaintiff, there is no evidence that this animosity so infected the handling of her grievance as to undermine its overall fairness. In fact, the evidence shows that Reed was just one of four individuals who participated in the decision not to pursue Plaintiff's grievance.

Accordingly, the Union's motion for summary judgment is granted on the grounds that there is insufficient evidence that the Union breached its duty of fair representation. As the Court has found that summary judgment is due to be granted in favor of the Union, the Court need not consider the issue of whether Morrison's violated its labor contract and, therefore, Morrison's motion for summary judgment also is granted.

III. CONCLUSION

In accordance with the foregoing analysis, the "Motion for Summary Judgment" filed by Defendant united Steelworkers of America, AFL-CIO-CLC, (Doc.21), and the "Motion For Summary Judgment" filed by Defendant

Morrison's Hospitality Group, (Doc. 24), are due to be, and are hereby **GRANTED.**. The above-styled action is **DISMISSED WITH PREJUDICE.**

DONE, this 8th day of April, 1996.

Alex T. Howard, Jr.
UNITED STATES DISTRICT
JUDGE

APPENDIX D - CONTRACT CLAUSE XXXI RELATING TO CREW LEADERS

ARTICLE XXXI

CREW LEADER

Section 1. Any employee may be designated by management to assume crew leader duties and shall be paid twenty-five cents ($.25) per hour above the classification rate. Crew leaders shall be assigned to cafeterias and shifts as deemed necessary by management. It is the function of a crew leader to meet management's requirements as it pertains to quality and quantity of service, and upon failing to do so shall contact management.

APPENDIX E - DELIA WEST'S GRIEVANCE WITH ATTACHMENT

GRIEVANCE REPORT

USWA Local Union No. 320
Location Morrison's

Grievance No._____
Date July 1, 1994

Employee's Name
Delia West

Identification No.
420-56-5530
(891557)

Department
Food Service

Job Title
Food Service

Use space below to write in other important Grievance information
I arrived at work at 5:45 a.m. on June 29, 1994. I mistakenly thought I was not suppose to be working on the above date.

Nature of grievance
Fired (terminated) because I mistakenly read the work schedule. See attachment one for the rest of the grievance.

Settlement requested in Grievance I want to be reinstated to my job from which I was wrongfully fired (terminated) with back pay for each day I am off.

Agreement violation Article XXIII, VIII & XVIII

Signature of Aggrieved

S/ Delia West

Signature of Union Representative:

Attachment One

I have worked on this job for eighteen (18) years. On Wednesday, June 28, 1994, I went to work at 6:00 A.M. and I looked at the schedule and several other people looked with me, namely, Earnestine Russell, Bobbie Jean Miller, and Mr. Griffin. We determined that I was not supposed to be there. So I went back home. Around 8:00 A.M. my daughter called and said I had made a mistake, I was supposed to be at work. I immediately called Tammy, and asked to speak to Mr. Wallace. Tammy told me he would be in at 8:30. I called back at 8:30 and told him what happened. He told me, "let me think about it." He called me back and told me, as of today (June 29, 1994) you no longer have a job with Morrison and turn in your uniform. I do not understand this extreme action, since I have never been late, never missed a day, and this was an honest mistake. It is not like I did not come to work, I did come but mistakenly thought I was not suppose to be there.

My crew leader, Viola Reed, saw me there (June 29, 1994) and saw me leaving and could have called my mistake to my attention but she did not.

Carl Atkins, my union representative, told me to gat a grievance form from my crew leader, Viola Reed, who is also my union steward, but when I asked her for the form on June 30, 1994, she said, "is that the way he told you to ask me," I then went to pick up my checkand come back to Viola, waited for a brief time, she then looked at me and said "do you have a problem with me," and then she laughed, but she still would not give give me the grievance form.

APPENDIX F. - MORRISON'S RESPONSE TO THE GRIEVANCE.

MEMORANDUM

To: Ms. Delia M. West

From: Jessee Wallace, Director
Morrison's Health Care Group

Date: JULY 05, 1994

Subject: Grievance Report Dated July 1, 1994

Ms. West, I have reviewed your Grievance Report and have meet with your Union Stewards, Ms. Viola Reed and Ms. Velma Lucy. Ms. West your termination as of June 29, 1994 will stand as is. There has been no Union Agreement Violations by Morrison's.

CC: Ms. Viola Reed
Ms. Velma Lucy
Mr. Carl Atkins
Mr. Louis Scott
Mr. Jim McConnell
File

APPENDIX G - DELIA WEST'S LETTER TO MORRISONS AND THE UNION NOTIFYING THEM THAT SHE WANTED TO GO TO STEP 2A

Route 1, Box 90
McIntosh, Al 36553
July 15, 1994

District Manager
Morrison's Health Care Group of
Morrison's Hospitality Group at
Searcy Hospital
7400 Roper Lane
Daphne, Alabama 36526

Dear Sir or Madam:

I received the enclosed Memorandum from Jessie Wallace, Director of Morrison's Health Care Group of Searcy Hospital in reference to a grievance I filed concerning my June 24, 1994, termination. This letter is written to you because I now wish to proceed to Step 2 A of Article XVIII of the Grievance Procedure and Arbitration of the agreement, as the matter of my termination has not been satisfactorily resolved.

Please notify me of the date, time and place of the meeting, as I am excercising my right to be present at any step of the grievance procedure in accordance with Article XVIII of the Agreement.

Yours truly
Signed/ Delia M. West
Delia M. West

Ms. Viola Reed
Mr. Jessie Wallace
Mr. Carl Atkins
Mr. Louis Scott
United Steel Workers of America, AFL-CIO-CLE

APPENDIX H - CARL ATKIN'S LETTER TELLING DELIA WEST SHE COULD NOT PROCEED WITHOUT THE UNION STEWARDS' PERMISSION

UNITED
STEELWORKERS OF
AMERICA
AFL-CIO-CLC

951 Government St. Bldg. Suite 519
Mobile, Alabama 36604
(205)433-3787 • Fax (205) 433-6823

July 7, 1994

DELIA WEST
ROUTE 1, BOX 90
McINTOSH, ALABAMA 36553

DEAR DELIA:

I received your certified letter yesterday p.m. And want to respond to you and once again let you know the procedure you must follow under the terms of the labor agreement in order to bring a grievance at your work place. Article XVIII of the agreement sets out the steps to be followed to bring and pursue a grievance. As the servicing staff rep. For the Union at your Local and all the others serviced from the mobile office, I cannot file a grievance for any member of the Union as I have explained, it must carry the signature of a Steward and be presented to the Manager by the Steward. Should the Steward believe there was "cause" in a discipline case ot that there is little or no chance of being successful it is not mandatory that the Steward bring a grievance in every case. As you know I tried to get the Stewards to sign your case but they would not and gave many reasons why none of which were because they did not like you.

My advise to you is to go to the Stewards and explain your views to them and attempt to get them to sign and submit your grievance.

FRATERNALLY,
Signed/Carl H. Atkins
Carl H. Atkins, Staff
District 36, USWA

cc Thelma Lucy
Viola Reed